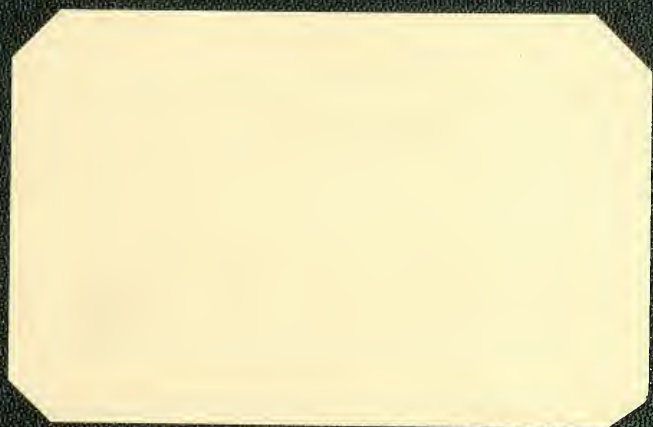


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CONFISCATION OF REBEL PROPERTY.

SPEECH

OF

ION. WILLIAM KELLOGG,

OF ILLINOIS,

DELIVERED

IN THE HOUSE OF REPRESENTATIVES,

MAY 24, 1862.

WASHINGTON, D. C.

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S P E E C H .

The House having under consideration the bills to confiscate the property and free from servitude the slaves of rebels—

Mr. KELLOGG, of Illinois, said :

Mr. SPEAKER : To restore the Government in its functions, unity, and power, and to preserve the Constitution intact, should be, and doubtless is, the desire and object of all true men. In considering the various propositions before the House, this object should be kept constantly in view ; for though the rebellion be crushed, yet if we have infracted the Constitution and dissolved its great bonds, we have indeed accomplished little more than the rebels themselves designed—the destruction of the Constitution.

Mr. Speaker : From the reflection I have been able to give this subject, I am satisfied that the passage by Congress of a judicious confiscation bill will be in consonance with the spirit of the Constitution, and materially tend to the restoration of the Government. In this, like all other Governments, there are two great elements of the administration of its powers : one to be brought into exercise when the physical power is developed in arms and armies ; the other to manifest itself through judicial tribunals. The war power, so called, is a part of and incident to every Government, and whether written expressly in our Constitution or not, is nevertheless a part of it. No Government can exist permanently without it. It is its shield ; it is that power alone to which recourse can be had when its existence is threatened by invasion from abroad, or civil war within its own limits. To deny this power would be to deny the right and power of self-protection. These powers are both written in the Constitution, and do in nowise conflict with each other.

The Constitution declares in express terms the war power. It is as clearly laid down, it is as distinctly marked out, as any express power that is given by the Constitution. But even were it not declared in express terms, I assume that the Government cannot exist without it. The moment you form a government with the view of exercising the functions of a government, that moment you give to it the great element of self-preservation, which is no more nor less than the war power—the power to protect itself.

Mr. Speaker: If our Government does not possess that power to-day, it is a failure, a rope of sand; it is a useless thing that we have revered for many years. If, sir, we, as a nation, have not the power of self-preservation, it is time that the people of this Government, with its great prosperity and its great inherent elements of power, should bestir themselves, and fix it as a cardinal principle of the Constitution. But, sir, no need of this. The Constitution expressly declares, in language not to be mistaken, that the Government shall have power to declare war and to raise armies. What more can be asked? What is the object of the power to declare war? None other than the object of maintaining the Union in perpetuity; for in this Christian era of the world Governments should have no other object than the maintenance of their rights, their dignity, the happiness and prosperity of the people, and the perpetuity of their existence; and this Government has all the power which is necessary to accomplish that high object. And incident to that, I assume, is the power of the confiscation of the property of enemies, engaged either in civil war or in war between two nations or Governments.

The short time allowed by the rules of the House for the discussion of this subject, requires that we should glance as hastily as possible at some of the main points necessary to be considered and discussed. I confess, sir, that I have been somewhat surprised in the discussion that has taken place in this House by men of eminent learning and patriotic motives, who have seemed to rack their brains to find some reason why we have not the power to effectually and speedily crush out this rebellion. When this Government is struggling with mighty throes under the great events that are upon it, when its very existence is threatened, its true friends should seek first to find authority for that reasonable power which will sustain it and transmit it to posterity in perpetuity.

On the contrary, here in this House, efforts are being made, with great ingenuity, to show that the Constitution is limited in its power of accomplishing the very object for which it was formed. I think that a wrong construction has been put upon it. I think a wrong construction has been placed upon the law of nations, to which it is important to refer in considering the rights and duties of nations in the exercise of this power.

It has been said that there is no power of confiscation of the property of public enemies. Sir, to my mind, if there is any one proposition of law which is well settled in this Government and by the law of nations, it is the power to confiscate the property of enemies, and that that power exists in Congress; and, in my judgment, it should to-day be exercised.

But, Mr. Speaker, my object to-day is more particularly to suggest some authorities to the House, and to call the attention of Congress to the well-established principle of the laws of war, than to make any appeal to the House. I shall, therefore, proceed to suggest such authorities as I have been enabled to collect, and which I think will fully and clearly establish the right of Congress to pass a confiscation act with a view to cripple the energies and power of the enemy, and to reimburse ourselves for the expenditures of this war.

In considering this subject, it is proper to refer to authorities which

have been recognised by the nations generally as good authorities, and so expressly recognised by our own courts. I read first from "Vattel on the Laws of Nations :—

"A State taking up arms in a just cause has a double right against her enemy: first, a right to obtain possession of her property withheld by her enemy, to which must be added the expenses incurred in pursuit of that object, the charges of the war, and the reparation of damages; for, were she obliged to bear these expenses and losses, she would not fully recover her property or obtain her dues. Second, she has a right to weaken her enemy, in order to render him incapable of supporting his unjust violence; a right to deprive him of the means of resistance."

Have you an enemy in the field with whom your armies are engaging; whose armies are formidable and whose warfare is ruthless and determined? What is your first right? Your first right and your first duty is to cripple your enemy by taking from him the means of carrying on his unjust war against you; keeping this well-established principle fully in view, there will be little difficulty in deriving from the Constitution, expounded by the law of nations, the right to confiscate the property of the rebels now in arms.

To those who talk most feelingly of the rights of those in arms against the Government, and yet demand a speedy suppression of this rebellion by the power of the nation, I submit right here this proposition: how would you most successfully cripple the rebels in their power of offence or resistance? The answer forces itself upon the lips of every man. By taking from them the means of supporting and maintaining armies. That reason lies at the base of this right to take the property of the enemy. Vattel continues:

"Hence, as from their source, originate all the rights which war gives us over things belonging to the enemy. I speak of ordinary cases and what particularly relates to the enemy's property. On other occasions, the right of punishing him produces new rights over the things which belong to him, as it also does over his person. These we shall presently consider.

"We have a right to deprive our enemy of his possessions, of everything which may augment his strength and enable him to make war. This every one endeavors to accomplish in the manner most suitable to him. Whenever we have an opportunity, we seize on the enemy's property and convert it to our own use; and thus, besides diminishing the enemy's power, we augment our own, and obtain, at least, a partial indemnification or equivalent, either for what constitutes the subject of the war, or for the expenses and losses incurred in its prosecution; in a word, we do ourselves justice."

Mark you, because you have the right to cripple the enemy and prevent him from sustaining armies in the field, you have the right to take all that belongs to the enemy—all that by which he supports his armies. Gentlemen should not tax their brains to find authority for rejecting the doctrine of the right of confiscation, for the proposition is not only fully established by authorities, but is consonant with justice and reason. This is but the commencement of a long series of authorities fixing beyond question the right of confiscation.

I would ask the gentlemen who doubt the power under the general provisions of the laws of war to confiscate an enemy's property, to revolve in their own minds how it is that this irresistible reasoning and cogent conclusions of this writer on international law are to be overcome. I am told, perhaps, that this book was written so long ago that it is not entitled to credit. I leave that for those who seek for subterfuges to resist the overwhelming logic of this writer. That I may not be mistaken in this matter, I will read from another authority, and one of the older ones too.

Bynkershoek, in his Treatise on the Law of War, speaking of cases where treaties between nations may change the rule and right of confiscation of enemy's property, says :

"But if there are no such treaties, or if the goods and actions are not taken away within a limited time, it is asked, what is the law in that case? And surely, such being the state of war, that enemies are on every legal principle proscribed and despoiled of everything, it stands to reason that everything belonging to the enemy which is found in the hostile country changes its owner. It is, besides, customary, in almost every declaration of war, to proclaim that the goods of enemies, as well those found among as those taken in war, shall be confiscated."

And again he says :

"If we follow the strict law of war, even immovables may be sold, and their proceeds lodged in the public treasury, as is done with movables."

It is here declared that you may take the property, the land, and everything which belongs to the enemy, that you may cripple him and prevent him doing you wrong and injury; and any nation that is warred against, that will not take the ordinary and most effective means to resist that war and bring it to a speedy termination, illy discharges the duty of a sovereign State.

Lest, however, I shall be charged with reading authorities of rigor which are not sustained by modern practice and decisions, I propose to read now from the decisions of our own courts. I read from the opinion of the court delivered by Chief Justice Marshall, a man learned in the law, and whose opinions, in court or out of court, are entitled to great respect and consideration. In the celebrated case of *Brown vs. The United States*, Chief Justice Marshall, as a part of his opinion in that case, declares :

"Respecting the power of Government, no doubt is entertained. That war gives to the sovereign full right to take the persons and confiscate the property of the enemy, wherever found, is conceded. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself. That remains undiminished, and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will."

In another portion of the same opinion, it is declared, not only by a majority of the court, but by the dissenting judge also, that that power exists in Congress. If we have not the constitutional power, I would rather make any sacrifice than to adopt this kind of legislation. If we have the power, I am anxious for its exercise; and it does behoove us well to consider it, for the destruction of but one bond of the Constitution, to my mind, would be more dreadful, under existing circumstances, than the marching of armies.

Speaking of the proposition that modern practice had changed the rule of law, the same judge uses this language :

"This rule appears to be totally incompatible with the idea that war does of itself vest the property in the belligerent Government. It may be considered as the opinion of all who have written on the *jus belli*, that war gives the right to confiscate, but does not itself confiscate the property of the enemy; and their rules go to the exercise of this right."

Judge Marshall makes no mincing, halting, doubting argument, but declares in that cool, deliberate language that commends itself to the heart and brains of every man, that the right to confiscate property generally does exist, and I ask the opponents of this doctrine to meet this authority. Certainly they will not meet it by saying that it, too, is

of so ancient a date that it should not be considered as a correct exposition of the law.

Justice Story, in that case, differed with the court on the question of what kind of special legislation was necessary to authorize the courts to interpose; but upon the power of confiscation in Congress there was no disparity of opinion between them, and he says, in the same case:

"In respect to the goods of an enemy found within the dominions of a belligerent Power, the right of confiscation is most amply admitted by Grotius, and Puffendorf, and Bynkershoek, and Burlamaqui, and Rutherford, and Vattel. I do not find any denial in authorities which are entitled to much weight; and I therefore consider the rule of the law of nations to be that every such exercise of authority is lawful, and exists in the sound discretion of the sovereign of the nation."

I should have no occasion to go further and cite authorities—for the right of confiscation generally, of all property of the enemy, seems to be so conclusively shown that it would be a useless waste of time to read them; but in view of the fact, that an American commentator has been cited here to sustain the denial of this right, and to show that there was no such power, I refer to Chancellor Kent, an able commentator on the law of nations. Therefore, I deem it my duty to read a little further upon that point; and that, too, from this same distinguished commentator. I was surprised when I heard the gentleman from Missouri [Mr. PHELPS] read that authority as evidence of the want of power to confiscate. So much confidence had I in his opinion that I supposed myself in error, and I examined, to some extent, the writings of that commentator upon the subject. But while I will not enter into a controversy with any gentleman upon that subject, I will present the plain and unmistakable language of that writer, and leave it for the House and the country to judge who has most faithfully cited him as authority. I read from the first volume of Kent's Commentaries:

"When hostilities have commenced, the first objects that naturally present themselves for detention and capture, are the persons and property of the enemy found within the territory on the breaking out of the war. According to strict authority, a State has a right to deal as an enemy with persons and property so found within its power, and to confiscate the property, and detain the persons as prisoners of war."

Had that been read before, I would not have detained the House to read it; but there is the acknowledgment by this American commentator, in the most unequivocal language, that there is a power of confiscation over all the property of the enemy, and the right to detain their persons as prisoners.

What more can be asked from American authorities to sustain the position I have taken than those I have cited? But I again read from Justice Kent. In citing some authorities which seemed to oppose this view of the law, Kent himself summed them up, and declared the law to be as follows:

"But however strong the current of authority in favor of the modern and milder construction of the rule of national law on this subject, the point seems to be no longer open to discussion in this country; and it has become definitely settled in favor of the ancient and sterner rule, by the Supreme Court of the United States."

"When the case was brought up on appeal before the Supreme Court of the United States, the broad principle was assumed that war gave to the sovereign full right to take the persons and confiscate the property of the enemy wherever found; and that the mitigations of this rigid rule, which the wise and humane policy of modern times had introduced into practice, might more or less affect the exercise of the right, but could not impair the right itself."

In this he cites the very decision I have read, and acknowledges

it to be the law. Then, sir, why, in good faith, should not gentlemen have read the conclusion to which the commentator comes in acknowledging, in the fullest possible manner, the right to confiscate enemy's property and seize their persons as prisoners?

But I must pass on to another portion of this subject. Having established, as I think, the power in war to confiscate the property, both movable and immovable, of enemies for the benefit of the State, I come now to apply this rule and law of nations to the present condition of our unhappy country. When rebellion becomes so formidable as to require the mustering of armies to suppress it, it becomes a civil war, and it is to be conducted upon the principles and the laws of war. The traitors add to their offence of treason the higher crime of civil war, and may be treated, not only as rebels guilty of treason by the laws of the land, but may be treated also as a public enemy. To support this proposition, I will read some authorities upon that point. I wish my position to be understood. I hold that these rebels now in arms are subject to the civil laws as traitors. Having committed treason, they are subject to punishment by the courts under the Constitution; having risen to a higher crime, that of levying civil war, engaging in and assuming the character of public enemies, they may be treated as such. They are treated as public enemies; and, deny it as you will, before I close I will show that the laws of nations treat them not only as traitors, but as public enemies, and that they are entitled to the same rule of warfare while in the field, and are bound to bear the burdens which pertain to a condition of public war; yet in nowise are they exempt from punishment for the crime of treason by the courts. Judging this matter by the laws of nations, I find this to be the rule:

"When a party is formed in a State who no longer obey the sovereign, and are possessed of sufficient strength to oppose him, or, when in a republic, the nation is divided into two opposite factions, and both sides take up arms—this is called *civil war*.

"Setting, therefore, the justice of the case wholly out of the question, it only remains for us to consider the maxims which ought to be observed in a civil war, and to consider whether the sovereign in particular is, on such an occasion, bound to conform to the established laws of war.

"A civil war breaks the bonds of society and Government, or at least suspends their force and effect; it produces in the nation two independent parties, who consider each other as enemies and acknowledge no common judge. Those two parties, therefore, must necessarily be considered as thenceforward constituting, at least for a time, two separate bodies, two distinct societies. Though one of the parties may have been to blame for breaking the unity of the State and resisting the lawful authority, they are not the less divided in fact. Besides, who shall judge them? Who shall pronounce on which side the right or wrong lies? On earth they have no common superior. They stand, therefore, in precisely the same predicament of two nations who engage in a contest, and being unable to come to an agreement, have recourse to arms.

"This being the case, it is very evident that the common laws of war, those maxims of humanity, moderation, and honor, which we have already detailed in the course of this work, ought to be observed by both parties in every civil war."—*Vattel's Law of Nations*.

Again: the same writer declares that—

"When the sovereign has subdued the opposite party, and reduced them to submit and sue for peace, he may except from the amnesty the authors of the disturbances—the heads of the party. He may bring them to a legal trial, and punish them, if they are found guilty."

The law is most clear and plain, that when a rebellion rises to that condition that the nation is bound, for its preservation, to meet armies with armies, to inaugurate all that pertains to war, the belligerents should carry on such war according to the rules and laws of war, and

are to be governed in their action by those rules. Sir, this rebellion has become a civil war, and the parties engaged in it are entitled to the rule and code of civilized warfare. They are also bound to bear the penalties and burdens which are incident to that warfare, one of which is confiscation, as I think I have most fairly shown.

Again, sir. These authorities fully sustain me in the proposition that, having subdued them by arms, they are not exempt from the penalties of treason, but that they sustain the double character of traitors to the Government and public enemies of the nation; that all that pertains to war between two enemies pertains to this war, and that having crushed out the rebellion, the civil law and the jurisdiction of the courts may be brought to bear, and the penalties of the law be enforced upon them for their acts of treason. And this, in my judgment, does not at all conflict with the proposition that we have a right to confiscate their property because they are public enemies.

But it may be said that this is all from the books merely, and has no application to the present rebellion. I wish to call the attention of gentlemen who entertain such an opinion to the condition of things as they really exist now in the country. There are to-day six hundred thousand men arrayed in armies upon the side of the Government, and probably four hundred thousand men in the rebel armies; perhaps more. These armies meet everywhere, deluging the country with blood; and shall we say longer that this is a mere pitiable rebellion? No, sir, it has risen up in the scale of warfare, in the number and power of belligerents, in its atrocities perpetrated by the rebels, and its results, until it has become the most momentous war of the age.

I am aware that many have entertained the theory that the rebel armies were not belligerents and enemies as understood by the law of nations. This I have long thought was a grave error. There is no disguising the sad fact that there is not an element or characteristic of war in its fullest development that has not and is not constantly manifesting itself in the civil war now desolating the country. A glance at the condition of the rebel government and forces will not fail to dispel this illusion from the mind of any dispassionate and fair man. They have assumed a government, with all the machinery, forms, and functions of a government; have organized, armed, and equipped an army and navy; built forts to defend cities; and have and do subsist armies. Our armies meet theirs in sanguinary conflict; prisoners are captured and held until exchanged by arrangements of the belligerent parties in strict conformity with the rules of war. We besiege their fortified positions with immense armies, and when they are driven from cities and districts of country, military governors are appointed to administer temporary governments therein, and to aid and protect the civil authorities—and that, sir, where the authorities of the Government had been obstructed and overthrown by the force of rebel armies; we send and receive flags of truce, and under their protection prisoners are exchanged according to the usages of war.

Again, sir. We have declared, and with the power of our Navy enforced, the blockade of many of the important ports of the country, and have required foreign nations to respect such blockade, a proceeding totally inconsistent with the doctrine that war does not exist. Neu-

tral nations are only bound to respect a blockade when declared and enforced by belligerent Powers, the object of which is to destroy the commerce of the enemy, and prevent him from receiving material aid in sustaining armies and carrying on a war. On this ground and for these reasons all neutral nations are required by the laws of nations to respect a blockade so declared and sustained. That our own Government and many powerful foreign Governments have applied this doctrine of the law to the present condition of the country our intercourse with them and their declarations and acts abundantly attest. All this has been done and is being done because of the belligerent power of the rebel forces on the one side, and the necessary war force on the part of the Government to conquer and subdue this wide-spread civil war. And now, sir, with all these facts standing so prominently before the mind of this House, will any gentleman say that war does not exist? I think not. No one, candid with himself, howsoever much he may desire to defeat this bill, will longer rely on the shallow pretence that war is not in the land. Was not Vattel right when he said that when a nation was divided into two opposing parts, which take the field against each other, although one be rebel in its character, war does then exist in fact, and should be conducted by the rules and laws of civilized warfare?

Now, sir, I ask, will any man say that we have a right to omit any of the means known to civilized warfare to cripple our enemy and prevent his sustaining his army in the field to strike down our fellow-citizens who are willing to peril—yea, sacrifice—their lives to uphold the flag and the Union and preserve the Government from the hands of the spoilers?

Mr. Speaker: It is also written in the Constitution of this Government that we may suppress rebellion. I heard it stated the other day that the framers of the Constitution never did contemplate such a condition of things. That, sir, is the greatest mistake in the world. They did contemplate it. They had read the history of the world. They knew what might arise, and they provided for this very case. It was not, I think, quite just to those who framed the Constitution to say that they did not contemplate that a condition of things like that which now distracts the country might occur. The Constitution says that, in order to suppress rebellion, Congress may call out the militia, which is the reliance and the military power of the nation. We may call upon the entire physical power of the Government; we may put the whole strength of the nation into the field to suppress insurrection or to repel invasion. We have the same power to suppress rebellion that we have to repel an invasion by a foreign power.

The Constitution declares that Congress shall have power "to declare war," "to raise and support armies," "to provide for calling forth the militia to execute the laws of the Union, to suppress insurrections and repel invasions."

It will be seen that the Constitution contemplates three events in which Congress shall have the power to set in motion the military arm and power of the Government against an armed force: the first, when war is declared by the Government; the second, when a war of insurrection is set on foot within the Union; the third, when the country

is invaded by a foreign Power. In the latter two, the language is identical, and in the first substantially the same. The object to be attained by the exercise of the war power mentioned in the class of cases just referred to is precisely the same, the protection of the Government; and the rule of construction in considering what power is necessarily implied in order to carry into execution either of these express powers must doubtless be the same. The preservation of the Government from destruction by insurrection and rebellion is as important as to preserve it from destruction by an invading Power, and the implied means to accomplish that object are certainly as clearly given in the former as in the latter case. The power to declare war and repel invasion carries with it, by clear implication, the right to prosecute a war to the accomplishment of that object, by all the means and in the manner recognised by the laws of nations and of war. The right to grant letters of marque and reprisal is given in express terms, and yet so clearly is that power an incident to war, that had it not been mentioned in the Constitution, it would nevertheless have been within the power of Congress. Justice Story, in his opinion in the case of *Brown vs. The United States*, (8 Cranch,) says:

"The power to declare war, in my opinion, includes all the powers incident to war, and necessary to carry it into effect. If the Constitution had been silent as to letters of marque and captures, it would not have narrowed the authority of Congress. The authority to grant letters of marque and reprisal, and to regulate captures, are ordinary and necessary incidents to the power of declaring war."

And on the subject of implied powers, Mr. Madison, in commenting on that portion of the Constitution which declares that Congress shall have power to make all laws necessary to carry into execution the powers vested by the Constitution in the Government of the United States, says:

"Had the Constitution been silent on this head, there can be no doubt that all the particular powers requisite as means of executing the general powers would have resulted to the Government by unavoidable implication. No axiom is more clearly established in law or in reason, than that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included."

The doctrine of implied powers has also received the sanction of the Supreme Court of the United States. That court, in the case of the *United States vs. Fisher et al.*, (2 Cranch,) declares the law to be that "Congress must possess the choice of means, and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the Constitution." It would seem that a proposition so consonant with reason could not require further authorities to sustain it.

Mr. Speaker, by this doctrine of implied power when war is once declared by Congress, the right and power follows to prosecute the war by all the means known and recognised by civilized nations to the accomplishment of the object for which it was declared, and most prominent among these means, as I have, I think, clearly shown, is the right of confiscation of the property of the enemy. The grant of power to suppress a war of insurrection is as ample and unlimited as the power to declare war or repel invasion. The same means are requisite, and the same force necessary, in the former as in the latter case. The object to be attained is the same, and equally important. If, then, the right

of confiscation exists in one case, it certainly does in the other. War in its fullest extent does exist, and is indispensable to suppress the present rebellion, and for the accomplishment of that object Congress may exercise all the legislative power necessary to effect it; and in this, as in other wars—and none have been, and I trust never will be, more determined and extended than this—the destruction of the enemies' commerce by blockade and the confiscation of their property are among the proper and necessary means to be used for that purpose. Sir, we should not ignore the startling facts which present themselves on every side, but at once meet them with measures commensurate with the object to be attained and the exigencies of the times. No other Government would hesitate, no other nation would fail promptly to use this power, so clearly legitimate, in an exigency like this. The history of nations is replete with its exercise.

The learned writer on National law, Bynkershoek, cites, with approbation, numerous cases in which the property, both real and personal, of rebels engaged in civil war, has been confiscated to the State in common with that of foreign enemies; and if any gentleman is curious to see the authority to which I allude, I cite him to "Bynkershoek's Laws of War."

But, sir, we are not wholly without precedent in our own country. In many of the colonies, in that of Massachusetts in particular, as I recollect the history of the early days of the Republic, the goods and lands of those who adhered to the Crown of Great Britain were confiscated, and the title by which much real estate in that State is now held springs from colonial confiscation laws.

It has been said, Mr. Speaker, that there are provisions in the Constitution which are inconsistent with this view of constitutional power, and which limit the action of Congress in this regard. Let us look for a moment and see if this is not only an assumption of the opponents of the bill, put forth to defeat it, rather than having any existence in fact. Foremost among the provisions which it is claimed limit the power of Congress, is the following:

"No person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

The term "due process of law" is well understood to mean a proceeding in the judicial tribunals of the country. This, it is assumed, no one will deny. If property cannot be taken without the action of judicial tribunals—and this I understand to be the reasoning of those who deem this measure unconstitutional—how can property be seized in default of the payment of taxes levied by the General Government? In the mode of collecting taxes heretofore pursued by the Government, and that embodied in the tax bill now before the House, to which no one objects on the score of unconstitutionality, there is not the semblance of a trial either of the fact of the non-payment of the taxes, the right to seize the property, or any other fact connected with the transaction. It would seem that the sticklers for a strict construction of the Constitution, so strict in fact as to deprive the Government of the necessary power of self-preservation, should find in this provision a limitation on the power of Congress to authorize the seizure of proper-

ty for the non-payment of taxes. But the answer to this proposition is, that by another provision of the Constitution Congress has the "power to lay and collect taxes." In this, however, there is no express grant of power to seize, without trial, the property of a citizen, and unless there is some implied power given to Congress to adopt such means as it may think necessary to carry into execution the general power to lay and collect taxes, most clearly the citizen cannot be deprived of his property because of the non-payment of his taxes without a due and regular hearing in the courts of the country.

But, sir, I assume that every department of the Government, judicial, legislative, and executive, from the commencement of the Government, have decided that the general power "to lay and collect taxes" carries with it, by necessary implication, the power in Congress to adopt such means as in its judgment will best secure the object of the general grant of power, which is the collection of the taxes levied; and thus alone on what may be termed an implied power rests the constitutionality of the mode and method of collecting the revenue of the country by taxation, and yet it is as clear, well-defined, and certain, as any authority on which we base our action. Precisely analogous is the principle that the general power to declare war and suppress insurrections by the armed power of the nation carries with it the power to adopt such measures and means as Congress may deem necessary to its accomplishment, and the seizure and sale of property in one, and the confiscation of property in the other case, are the means that Congress may, and with propriety should adopt. And I think I hazard nothing in saying that on examination of the various grounds assumed by those who deem this measure in conflict with some provision of the Constitution, they will be found as untenable as the one just referred to.

Mr. Speaker, I will conclude my remarks on this branch of the subject by repeating that the Constitution declares that we may suppress rebellion by the power of war. The courts decide that confiscation of property is an incident to the war power. I say, then, that Congress has the right, under the Constitution, in order to suppress this rebellion by the exercise of the war power, to confiscate the property of our rebel enemies. In all this we see the wisdom of those who shaped and fashioned the Government, and indicated and defined its powers. They not only provided for its prosperity and the administration of justice in time of peace, but provided for administering all its power in time of war. They guarded well the rights of loyal citizens, while they provided abundantly the power to protect itself against a foreign foe or a traitorous rebellion; and we are unfaithful to our constituents, untrue to the past, unmindful of the future, and false to ourselves, if we do not employ all the means committed to our keeping to preserve intact the Constitution and the entirety and perpetuity of the Union.

And now, sir, having considered the power of Congress, I propose for a few moments to consider the policy of the measure. In considering a measure of this kind with a view to the policy of adopting it, it is important to consider the military power, and the condition and mode of warfare, of the enemy whom it is designed to affect. The military strength of the enemy I have to some extent considered. Their condition is such that seems to point directly to this mode of procedure

against them. Unlike other belligerents, they have no revenues or public property that may be sequestered; all of that character of property now rightfully belongs to the Government. Hence the impossibility of resorting to the confiscation of public property, which is not unfrequently resorted to to cripple an enemy and to reimburse the expenses of a war. And, therefore, I can hardly consider the objection to the confiscation of private property, under these circumstances, as other than a pretence to effect the defeat of the measure, and an unwillingness to strike in this manner an effectual blow at the rebel power. They are a rebel and seditious belligerent armed power within the territorial limits of the United States, possessing the means to sustain and subsist armies, and their property is being freely used for that purpose. Under these circumstances, every sense of justice and sound policy would seem to dictate that we should take from them the means of sustaining armies and continuing this most unjust and unparalleled war. We propose to tax the loyal portion of our nation to sustain our army and navy to an amount that savors of confiscation. Why should we not take from the enemy their property and thereby cripple their resources, and at the same time compel them to bear their just proportion of the expense of a war inaugurated by them without a shadow of reason, but for purposes only known to the enemies of free constitutional Government?

Their mode of warfare, Mr. Speaker, would seem to justify, if not demand, the most rigorous policy known to the laws of war. They plunder and destroy the property of Union men wherever they have the physical power to do so. The sad desolation that has marked the march of their armies has left a record of ruthless warfare more dark than that of barbarous ages. In Virginia, Kentucky, Tennessee, and Missouri, the homes of loyal men are made desolate, their dwellings burned, and themselves and families driven from the land, while traitorous rebels are secure in their possessions, the laws of the land respecting the rights of citizens. The rebels have immunities from violence and wrong that true loyal men are deprived of by the rebel hordes that infest and plunder the country. Smouldering ruins but too plainly mark the place from which loyal men have been driven. Prisoners, that the changing fates of war have placed in their power, are treated with more than savage cruelty; deprived of wholesome diet, confined in crowded prisons where pestilence ravages and destroys, they are murdered in cold blood by a ruthless soldiery for attempting to inhale, from their prison windows, the pure air of heaven. In the most brutal manner have they murdered our wounded soldiers who fell upon the field nobly, bravely defending and fighting under the flag of the Union. They have employed ruthless savages to make war upon our people, and permitted them, while under their command, to scalp and mutilate the dead, wounded, and dying of our countrymen. They have despoiled the grave of its dead; have digged therefrom, with their unholy hands, the bodies of those who fell in battle, for the hellish purpose of making from their bones articles to adorn their persons; and of the skull of a brave officer they made a drinking cup for use at their revels, where humanity would refuse to enter, and where devils alone did congregate.

When driven from their strongholds, they conceal beneath the surface of the earth, in frequented places, infernal machines, which, when pressed by feet of weary soldiers, explode, and thus they murder them. Many have fallen victims to this mode of inhuman assassination. Who does not blush for his kind and his country when he reviews the dreadful record of this civil war?

And who will not say that the savage warrior, with the bleeding scalp of his enemy at his girdle, is not an angel of light compared with those who, reared in a civilized and Christian land, can perpetrate such atrocities? For this a dreadful retribution will and must follow. Vengeance will not always slumber; the blood of our slain cries from the red field of strife for a deep and terrible retribution. It will come.

Sir, I would not retaliate; I would not adopt measures of extreme rigor; but I would take from them the means to again blacken the history of the world by the continuance of such dreadful and unnatural crimes.

Who can complain of the policy of confiscating the property of rebels in arms? Certainly they cannot; for they have adopted the policy of capture and confiscation in its greatest extent. The Senator from Kentucky [Mr. DAVIS] introduced and urged the passage of a more stringent confiscation bill than the one now before the House. Many gentlemen of Missouri and Virginia urge the passage of this bill; and the gentleman from Missouri [Mr. NOELL] advocated the enactment of this bill in an able and effective speech, as did also his colleague, [Mr. BLAIR.] Whence, then, comes the opposition? Mainly from the northern States; from gentlemen whose constituents are being sacrificed by thousands to put down and crush out this rebellion. Let them settle that account with their own people when they shall meet face to face, when the woe and mourning for those slain in battle shall convince them that war is in the land.

Now, what do we propose? We propose that the really guilty shall be punished and their property confiscated. I desire that those who have instigated this rebellion shall be punished, I care not how severely. Those who have led the southern portion of this Confederacy to murderous acts against the Government, and have induced unthinking men to attempt, by violence, its destruction, should be made to bear the penalty of treason and feel the weight and burden of the war they have induced. We should not in our legislation strike at the unthinking and the unwitting dupes of designing men, but we should strike at those whose heads have conceived and whose hearts have been enlisted in this work. For them I have no sympathy; to them but little mercy is due; they are rebels, and they are engaged in a war against a Government the best on earth. I propose to reach them, and them alone. Sir, this bill, forgetting all the past, the horrid past, that will stand for all time upon the records of the history of my country, proposes to condemn them to the loss of the very means by which they carry on this war. I would not reach the masses. I would leave them to be wooed back to their allegiance to the Government. You cannot, you should not, sacrifice whole communities, but you can punish the leaders of the rebellion. The history of the world does not furnish an instance in which such a rebellion has been raised against a Government, and

in which its leaders were not punished. I would woo back the men of the South who till their farms—the young men who, under excitement, have been led to deeds of disloyalty by the false statements of their leaders. I would woo them back, but ask me not to woo back the arch-traitors themselves. As well might you attempt to woo the tiger from his lust of blood, or lure the arch-fiend from his sulphurous home to the realms of light and peace from which he fell by like rebellion, as to lure back these men who lead the rebel armies and have instigated and continued this war of insurrection. Mr. Speaker, I do not feel at liberty to rest here without doing all in my power to cripple their energies and put an end to this desolating war. I tried to avert it. I wish it could have been averted. I had hoped that they would return to their allegiance.

But that time has passed, and we are derelict in our duty if we halt and hesitate longer in this emergency.

It has been my fortune, sir, to visit recently the homes of my constituents. We have sent many thousands to the field. How many of them may return is for the future to determine. Thousands will never return; they have sealed their devotion to their country with their lives; the altar of our common country has long been red with the blood of sacrifice. Go where you will through our State, and on the streets you will see maimed and disabled soldiers. Mothers and sisters nurse the sick and wounded, while fathers bury their dead slain in battle. But the heart of that people is sound; they have no fears of the result of this conflict; they have set their hearts on the preservation of the Union, and, if need be to accomplish it, they will send one hundred thousand more true men to the field.

But, sir, they expect us to do our duty; they will do theirs. They will demand of us—they do demand of us—to, in all constitutional ways, strike down the power of those who strike them. Sir, if we are as true to ourselves and our country as are our constituents to the Union we will not hesitate in our action to-day.

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